



The Comptroller General
of the United States

Washington, D.C. 20548

Ruppert

Decision

Matter of: World-Wide Security Service, Inc.--Reconsideration
File: B-225270.2
Date: March 17, 1987

DIGEST

1. General Accounting Office affirms prior holding that protester's failure to request a debriefing or to file a protest either with the contracting agency or the General Accounting Office until 6 weeks after the agency advises it that its proposed equipment does not meet the government's needs and that a contract is being awarded to another offeror renders the protest untimely.
2. When on its face a protest appears to be untimely, a protester who is in possession of facts that would establish its timeliness, but who does not initially present those facts to the General Accounting Office, runs the risk of dismissal and of refusal to reconsider the matter when the protester subsequently presents all relevant facts.
3. The General Accounting Office will not consider the merits of an untimely protest or invoke the "significant issue" exception to its timeliness regulations where the issues raised are not matters of first impression or of widespread interest to the procurement community.

DECISION

World-Wide Security Service, Inc. requests reconsideration of a decision in which we dismissed as untimely its protest against the rejection of its proposal as unacceptable under request for proposals (RFP) No. CS-86-051. See World-Wide Security Service, Inc., B-225270, Dec. 15, 1986, 86-2 CPD ¶ 676. The solicitation, issued by the Department of the Treasury's Customs Service, was for mobile X-ray inspection systems.

We affirm our prior dismissal.

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As indicated in our decision, the agency informed the protester by letter dated October 1, 1986, that its proposal did not adequately meet the needs of the government and that the contract was being awarded to American Science and Engineering, Inc. Since we did not receive World-Wide's protest until November 24, more than 6 weeks after the notification, and since there had been no agency-level protest or request for a debriefing, we held that the protest was untimely. Our Bid Protest Regulations require protests to be filed, i.e., received within 10 working days after the basis for them is or should have been known. 4 C.F.R. § 21.2(a)(2) (1986).

World-Wide requests reconsideration on the ground that its initial protest was timely, because it learned only 2 days before its November 17 letter to our Office that the agency had permitted the successful contractor to demonstrate that it could meet certain criteria in the solicitation, but did not afford World-Wide a similar opportunity. World-Wide argues that the agency thus did not provide fair and equal treatment of offerors. Alternatively, the protester requests that we consider its protest as raising a significant issue pursuant to 4 C.F.R. § 21.2(c) because the agency's action allegedly violated the Competition in Contracting Act of 1984 (CICA).

We still view World-Wide's initial protest as untimely. In it, the firm alluded to the awardee's opportunity to demonstrate its equipment and stated that although it had previously demonstrated some of its own equipment to the Customs Service, it was different from that proposed for the protested procurement. World-Wide, however, gave no indication of when it had learned of this allegedly unequal treatment, and in the absence of other evidence, we assumed that the firm either knew or should have known of it at approximately the same time as it learned of the rejection of its own proposal. The burden was on World-Wide to advise us that it had not learned of this second basis of protest until 2 days before the date of its letter to our Office. When on its face a protest appears to be untimely, a protester who is in possession of facts that would establish its timeliness, but who does not initially provide those facts to our Office, runs the risk of dismissal and of our refusal to reconsider the matter when the protester subsequently presents them. See Global Crane Institute--Request for Reconsideration, B-218120.2, May 28, 1985, 85-1 CPD ¶ 606.

Moreover, had World-Wide diligently pursued the information that provided its first basis of protest, either by requesting a debriefing or by filing a protest with the agency or

our Office, it might have learned not only why the agency rejected its proposal, but also of the awardee's opportunity to demonstrate its proposed equipment. World-Wide's failure to take action promptly upon receipt of the rejection letter renders the protest untimely on either ground.

As for review under the significant issue exception, we will review an untimely protest when the subject matter of the protest is of widespread interest to the procurement community or involves a matter that we have not considered in a previous decision. M. C. Dean Electrical Contracting, Inc.--Reconsideration, B-221992.3, Mar. 12, 1986, 86-1 CPD ¶ 248. We have considered numerous protests alleging unequal treatment of bidders and offerors. See, e.g., E.C. Campbell Inc., B-222197, June 19, 1986, 86-1 CPD ¶ 565; Computek Inc., et al., 54 Comp. Gen. 1080 (1975), 75-1 CPD ¶ 384. Since the issue here involves only a single offeror, we do not consider it significant within the meaning of our regulation. See Professional Review of Florida, Inc., et al., B-215303.3, et al., Apr. 5, 1985, 85-1 CPD ¶ 394 at 6-7. Further, the protester has not submitted any evidence which indicates that there has been a violation of CICA.

In any event, we find the protester's argument that it was treated unfairly without merit. The RFP provided that the agency would test the safety of the X-ray inspection system -- by having a pre-award demonstration performed by all offerors otherwise judged technically qualified. The agency advises us that World-Wide's proposal received an average score of 48, and that a minimum score of 60 was needed before an offeror was asked to demonstrate its proposed system.

We affirm our dismissal.

for *Seymour S. Fros*
Harry R. Van Cleve
General Counsel